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EXAMINER

TORRES, ALICIA M

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 09/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/054,747

Applicant(s)

KRETSCH, KEVIN R.

Examiner

Alicia M Torres

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) ____ is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-14 and 17-27 is/are rejected.
- 7) ☒ Claim(s) 9, 15 and 16 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) Z.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7, 8, 10, 11, 17-20, 25, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Majkrzak.

3. In regards to claims 1-5 and 7, Majkrzak discloses a weed control system (10) for a body of water, the system comprising:

A weed contacting member (24) suspendable within the body of water proximate a bed of weeds; and

A drive member (14) for automatically moving the weed contacting member (24) in a repeating, circular arc pattern (see figure 1) over the bed of weeds such that the weed contacting member (24) repeatedly brushes against any weeds in the bed of weeds, as per claim 1; and

Wherein the weed contacting member (24) is flexibly attached to a support member (18) which is located approximately on or above a surface of the body of water, as per claim 2; and

Wherein the weed contacting member (24) includes a cross-bar (80) having a plurality of tines (26) extending from a body of the cross-bar (80), as per claim 3; and

Wherein the drive member (14) is reversible and is configured to change a direction of movement of the weed contacting member (24) when a predetermined time limit is reached (see column 2, lines 5-7), as per claim 4; and

Wherein the drive member (14) includes a pair of opposing nozzles which alternately eject a jet of water to drive the drive member (14, see column 7, lines 64-67), as per claim 5; and

Wherein the drive member (14) includes a motor-driven wheel (80) which rolls over a floor of the body of water, as per claim 7.

4. In regards to claims 8, 10, and 11, Majkrzak discloses a weed control system (10) for a body of water, the system comprising:

A weed contacting member (24); and

Water activated means including a nozzle which emits water to develop thrust (see column 7, lines 64-67) for moving the weed contacting member (24) in a repeating pattern through the body of water such that the weed contacting member (24) repeatedly contacts any weeds in a path of the weed contacting member (24), as per claim 8; and

Wherein the weed contacting member (24) is suspended from a support member (18) which has a first end rotatably coupled to a stationary unit (12) proximate the body of water and which extends over a surface of the body of water, as per claim 10; and

Wherein water activated means (see column 7, lines 64-67) automatically changes a direction of movement of the weed contacting member (24) when a pre-determined time limit is reached, as per claim 11.

Art Unit: 3671

5. In regards to claims 17-20, Majkrzak discloses a weed control system (10) for a body of water, the system comprising:

A weed contacting member (24);

Means (14) for moving the weed contacting member (24) through the body of water proximate a bed of weeds; and

A controller which, in response to a timer, periodically reverses the direction of the means for moving (14) such that the weed contacting member (24) is repeatedly moved back and forth across the bed of weeds (see column 2, lines 5-7), as per claim 17; and

Wherein the weed contacting member (24) is suspended from a support member (18) such that the weed contacting member (24) brushes against any weeds in the bed of weeds, as per claim 18; and

Wherein the means (14) for moving the weed contacting member (24) includes a water activated means (see column 7, lines 64-67), as per claim 19; and

Wherein the means (14) for moving the weed contacting member (24) includes a motor-driven means, as per claim 20.

6. In regards to claims 25 and 26, Majkrzak discloses a weed removing system (10) wherein the following method is inherent, the method comprising:

Repeatedly brushing a bed of weeds with a weed contacting member (24) which is suspended from a support member (18) located proximate a surface of the body of water, as per claim 25; and

Wherein repeatedly brushing includes periodically reversing a direction of the weed contacting member (24) in response to a timer (see column 2, lines 5-7) such that the weed contacting member (24) moves back and forth over the bed of weeds, as per claim 26.

7. Claims 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Blumenfeld '027.

In regards to claims 12-14, Blumenfeld '027 discloses a weed control system for a body of water, the system comprising:

- a support member (56);

- a buoyant member (88) coupled to the support member (56) to keep the support member (56) at or above a surface of the body of water (27);

- a weed contacting member (90) suspended from the support member (56) to descend beneath the surface of the body of water (27); and

- a driver (39) to move the support member (56) across the surface of the body of water (27) in a repeating pattern such that the weed contacting member (90) also moves in a repeating pattern repeatedly brushes against any weeds beneath the support member (56), as per claim 12;

- wherein the support member (56) includes an elongated pipe having a first end rotatably coupled to a stationary unit (10) proximate the body of water (27), as per claim 13; and

- wherein the driver includes a water activated driver coupled to the support member (see column 3, lines 70-73), as per claim 14.

Art Unit: 3671

8. Claim 27 is rejected under 35 U.S.C. 102(b) as being anticipated by Thompson et al, hereafter Thompson.

In regards to claim 27, Thompson discloses a weed removing device wherein the following method is inherent, the method comprising:

Coupling a first end of a support member (28') to a stationary unit (20) proximate the body of water (40) such that the support member (28') extends over a surface of the body of water (40);

Suspending a weed contacting member (36) from the support member (28') such that the weed contacting member (36) is located beneath the surface; and

Moving the support member (28') in a repeating pattern such that the weed contacting member (36) repeatedly brushes against any weeds located proximate the weed contacting member (36).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Majkrzak in view of Beaumont.

The device is disclosed as applied to claim 1 above. However, Majkrzak fails to disclose wherein the drive member includes a reversible propeller.

Beaumont discloses a similar device (11) wherein the drive member includes a reversible propeller (58, 59, see column 5, lines 51-60).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the reversible propeller of Beaumont on the device of Majkrzak in order to provide directional control to the underwater apparatus.

11. Claims 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al., hereafter Thompson, in view of Majkrzak.

In regards to claims 21-24, Thompson discloses a weed control system for a body of water, the system comprising:

An elongated support member (28') positioned parallel to a surface of the body of water (40) and positionable at or above the surface, the elongated support member (28') having a first end rotatably coupled (see guide pulleys 45, 45' in figure 2) to a stationary unit (20) proximate the body of water (40);

A weed contacting member (36) suspended from the support member (28') and located beneath the surface; and

A reversible driver (14) coupled to the elongated support member (28') to drive the elongated support member (28') in a rotating manner repeatedly back and forth across the surface of a section of the body of water (40) such that the weed contacting member (36) is repeatedly pulled back and forth beneath the surface of the section to repeatedly contact any weeds located in that section, as per claim 21; and

Art Unit: 3671

Wherein the weed contacting member (36) includes a cross-bar (35') having a plurality of tines (36) extending from a body of the cross-bar (35'), as per claim 23; and

Wherein the reversible drive (33) is motor driven, as per claim 24.

Thompson fails to disclose wherein the reversible driver is coupled proximate a second end of the elongated support member, as per claim 21; and

Wherein the reversible driver is water activated, as per claim 22.

Majkrzak discloses a weed remover wherein the driver (14) is water activated (see column 7, lines 64-67).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to locate the driver at the second end of the elongated support member, since it has been held that rearranging parts of an invention involves only routine skill in the art (see embodiments of figures 6 and 7 of the Majkrzak '835 patent).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include the water-activated driver of Majkrzak on the device of Thompson in order to move the weed contacting member.

Response to Arguments

12. In regards to the argument that Blumenfeld '027 fails to include each limitation of the claims 12-14, the amendment made to claim 12 fails to read over Blumenfeld '027, as the weed contacting apparatus is still swung in a repeating circular arc with the movement of the support member, of which some of the positions are shown in figure 1.

Art Unit: 3671

13. In regards to Applicant's argument that Majkrzak does not include a "nozzle which emits water to develop thrust for moving the weed contacting member in a repeating pattern through the body of water such that the weed contacting member repeatedly contacts any weeds in a path of the weed contacting member", Majkrzak discloses that the weed remover system may be powered by a gas engine, solar panels, waves or other methods (see column 7, lines 64-67). This encompasses the nozzle claimed by the present invention in that Majkrzak cites "other methods" as being capable of providing movement, for which thrust is necessary, for the weed remover system and more specifically names "waves" or water as a general power means.

14. In regards to Applicant's argument that Majkrzak fails to anticipate wherein "water activated means automatically changes a direction of movement of the weed contacting member when a predetermined time limit is reached" as per claims 11, 17, and 26, there is nothing in the disclosure of Majkrzak that excludes the timer from reading on the present invention as the statement "the weed remover can be operated automatically at preselected times through the use of a timer" (see column 2, lines 5-7) is meant broadly, and further specification given by Majkrzak about the timer appears to be only an example of use.

15. Further, in regards to Applicant's argument concerning claim 17, it is noted that the features upon which applicant relies (i.e., that if the present invention gets stuck, it will reverse and become free) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

16. In response to Applicant's argument concerning claim 25, Majkrzak's disclosure does in fact "repeatedly brush" a bed of weeds with a weed contacting member "which is suspended

Art Unit: 3671

from a support member located proximate a surface of the body of water.” The roller (24) is repeatedly driven in a circular arc around support member (18) repeatedly brushing a bed of weeds, of which the support member (18) extends above the surface of the water and is therefore located proximate a surface of the body of water.

Allowable Subject Matter

17. Claims 9, 15, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

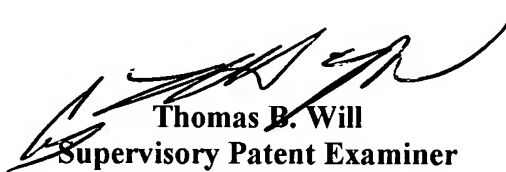
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3671

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia M. Torres whose telephone number is 703-305-6953. The examiner can normally be reached Monday through Thursday from 7:00 a.m. – 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at 703-308-3870.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is 703-305-1113. The fax number for this Group is 703-872-9306.



Thomas B. Will
Supervisory Patent Examiner
Group Art Unit 3671

AMT
August 26, 2003